

this case.”³ Judge Wheeler also analyzed the potential burden on Plaintiff in light of the numerous depositions taken in that case, including depositions in London, and that the travel distance to take Mr. Ruble’s deposition was less than 200 miles.

Judge Wheeler also ruled that while the United States may take Mr. Ruble’s deposition, the court was not making any determination with respect to the admissibility of any Fifth Amendment claim by Mr. Ruble, noting that such issue would be decided if and when it arises.

As the Court is aware, Plaintiff’s counsel in this case also represents the Plaintiff in the *Salem Financial* matter. As a result of Judge Wheeler’s ruling, counsel will be required to attend Mr. Ruble’s deposition in Pennsylvania regardless of the outcome of the United States’ motion. Plaintiff’s burden as detailed in its Opposition is therefore lessened in this case since the United States has indicated that it anticipates conducting the deposition in both cases on a single day. In the interest of reducing the burden on the Court and the parties, Plaintiff is withdrawing its Opposition, but only to the mere taking of Mr. Ruble’s deposition. To the extent Mr. Ruble claims the Fifth Amendment at his deposition, however, Plaintiff intends to object at the appropriate time to any attempt by the United States to use Mr. Ruble’s Fifth Amendment claim in support of its case, whether as evidence to support an adverse inference or otherwise.

As noted in Plaintiff’s Opposition, the United States has the ability to grant Mr. Ruble with immunity from prosecution prior to his testimony without prejudice. Plaintiff emphasizes the United States’ ability to grant immunity in this withdrawal of its Opposition because such a grant of immunity would likely eliminate Mr. Ruble’s assertion of the Fifth Amendment, and consequently eliminate the later expected evidentiary dispute regarding the United States’ offer of Mr. Ruble’s assertion of the Fifth Amendment to establish an adverse inference.

³ *Id.* at 2.

Respectfully submitted this 22nd day of May, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on May 22, 2012.

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